
(1995) 11 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Four Ways Travel And Tours

APPELLANT

Vs

M K N Nagamanickkam

RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Citation : 1995 3 CPR 626 : 1996 1 CLT 24 : 1996 1 CPC 95 : 1996 1 CPJ 166

Hon'ble Judges : A.L.BAHRI , R.L.GUPTA , GURKANWAL KAUR J.

Judgement

1. THIS appeal is by the Transport Company against whom District Forum, Ludhiana awarded a sum of Rs. 8075.10 as price of the goods sought to be transferred alongwith Rs. 500/- as cost claimed by the claimant with 15% interest thereon from the date of booking of the goods, i.e. 30.8.91 till payment and Rs. 1000/- as costs of litigation.

2. M /s. Gitane Exports Ludhiana booked goods (Hosiery Goods as stated) worth Rs. 8075.10 with the opposite party for being carried from Ludhiana to Berhampur (Orissa). The goods receipt and other bank papers were sent to Berhampur through bank. The goods were to be taken delivery of by a representative of the complainant (M/s. Shriman, the consignee). The goods did not reach Berhampur upto 25.10.91 and the consignee did not get bank papers released from the bank. The consignee therefore informed the complainant about it vide letter written in this respect. On 11.11.91, the complainant wrote to the opposite party for rebooking of the goods to Ludhiana as the goods have not reached the destination within the reasonable time and bank papers were not got released by M/s. Shriman. When the goods were not returned to the complainant at Ludhiana, the complaint was filed on 13.10.92. On notice of the complaint, the opposite party contested the same by filing reply. Apart from preliminary objections, the complaint was contested on merits. As per allegations, the consigner did not approach for taking delivery of the goods and he did not get the documents released from the bank. Although there was no agreement to get their goods re -booked, it was so done and the goods reached Ludhiana on 9.9.92. The goods were to be delivered on charging freight and demurrage. In

the replication filed, the stand taken up in the complaint was reiterated. After both the parties had filed affidavits and documents, the District Forum passed the impugned order. The question for consideration is as to whether there was any deficiency of service on the part of the appellant to take the goods to Berhampur. According to the Counsel for the appellant, there was no such deficiency and the finding arrived at by the opposite party is contrary to the evidence produced. There is no merit in this contention. It was in the special knowledge of the appellant as to when the goods actually arrived at Berhampur (Orissa). In the written statement filed, no such fact was mentioned, only vague assertion was made that the consignee did not get the goods released and did not get the bank papers released; inspite of specific assertions made by the complainant in para No. 8 of the complaint that upto 25.10.91, the goods had not reached Berhampur as per enquiry made. It was not controverted in the written statement. It was expected of the appellant to specifically give the date of arrival of the goods at Berhampur and it was from that that it could be judged as to whether the goods had reached Berhampur within a reasonable time of booking of the goods. During arguments, it is suggested by the Counsel for the appellant that ordinarily it would have taken about 20 to 30 days for the goods from Ludhiana to reach Berhampur. Assuming it to be so, the fact remains that the goods did not reach within this time at Berhampur. Rather the opposite party has failed to establish that goods reached within this reasonable time as suggested. Thus there was clearly deficiency of service on the part of the opposite party in carrying the goods to Berhampur and the complainant is therefore, entitled to the relief asked for.

3. LEARNED Counsel of the appellant has further argued that since the goods had reached Ludhiana may be in September, 1992, it was expected of the District Forum to give direction for delivery of the goods on payment of freight and demurrage. This contention is devoid of merit. If deficiency on the part of the opposite party has been proved, it cannot be held that the opposite party is entitled to either freight for rebooking of the goods to Ludhiana or for demurrage. It is the opposite party who is to suffer for the consequences of deficiency of service.

4. THE contention that the goods should have been returned when they were available at the time of the final order and not price of the goods again cannot be accepted. After expiry of three years, nothing could be said about the condition of the goods which are kept by the opposite party. It was open to the opposite party as is argued to sell the goods if delivery was not taken. No further comment is necessary in this respect. The District Forum was right in giving the direction to the opposite party to pay price of the goods regarding which there is no dispute. A sum of Rs. 500/- was claimed by the claimant on account of costs of tracing the goods. During arguments, it is suggested that these costs include expenses incurred on giving notices etc. to the opposite party. We are not satisfied with the explanation now offered. However, it is not explained as to how a sum of Rs. 500/- was spent on tracing out the goods. Thus the complainant is

not entitled to this amount or interest thereon.

5. FOR the reasons stated above, this appeal is partly allowed. The order of the District Forum is modified. The complaint shall stand allowed with a direction to opposite party/appellant to pay a sum of Rs. 3075.10 with 15% interest thereon from the date of booking, i.e. 30.8.91 upto the date of the payment. The complainant will also be entitled to the costs of litigation before the District Forum of Rs. 1000/ - as awarded. There will be no order as to costs in the appeal.

Appeal partly allowed.